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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,240

11/28/2005

Heinz Focke

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EXAMINER

DEMERE, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

09/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,240	Applicant(s) FOCKE ET AL.	
	Examiner CHRISTOPHER DEMEREE	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/10/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/28/2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

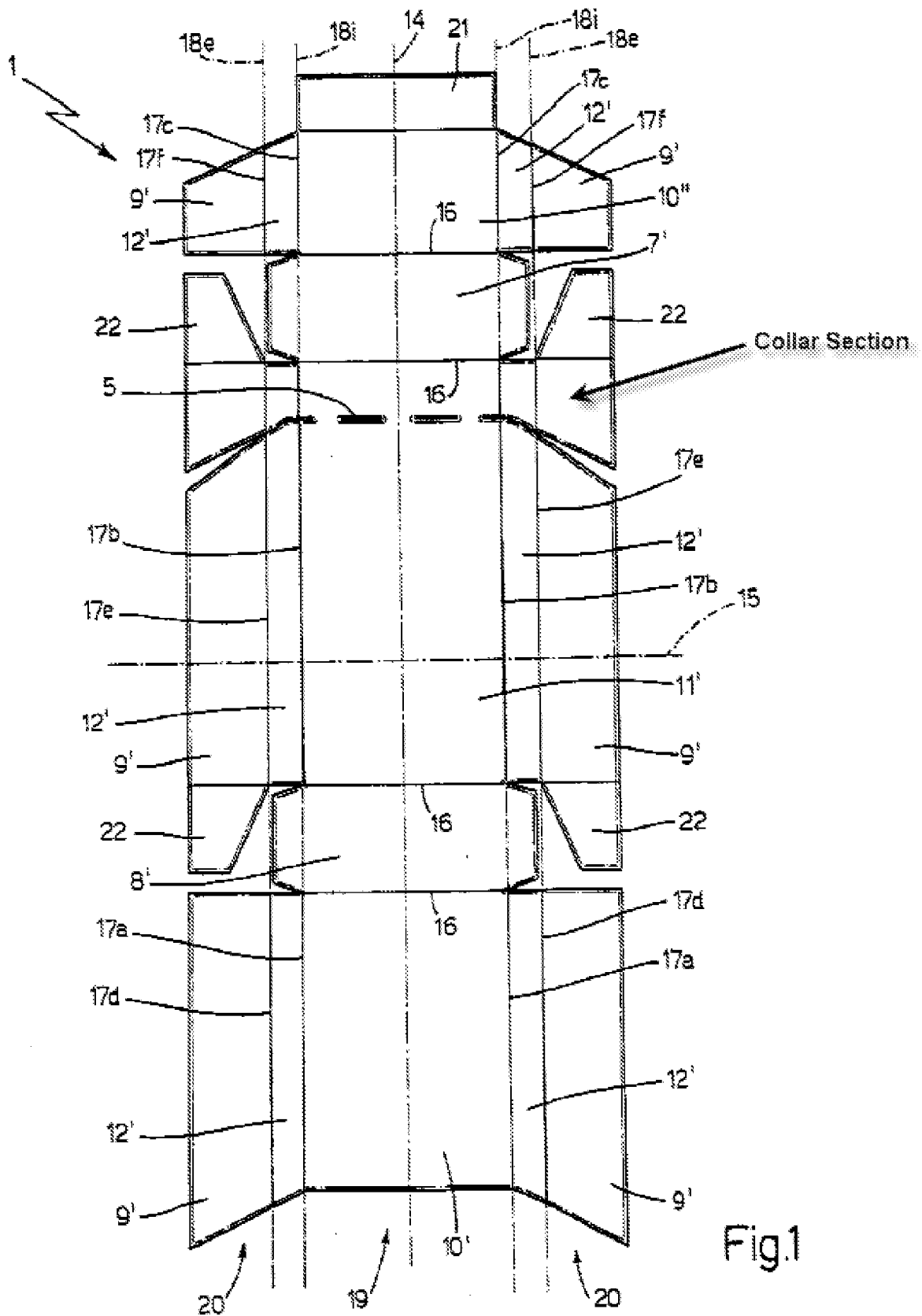
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12, 13, 16-18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzi (US 6755300 B2) in view of Jackson et al. (GB 819206 A; hereinafter Jackson).

Regarding claims 12, 13, 18 and 24, Brizzi teaches a hinge-lid box and the blank for making, made of cardboard or similar packaging material (Col 2 lines 35-38), in particular for cigarettes, comprising a box part (2), lid (4) and collar (see illustration below) and having longitudinal edges (13) and transverse edges (16) running crosswise thereto, characterized in that the longitudinal edges and/or transverse edges are

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configured by the deformation or embossing of the packaging material as an outwardly directed projection (see Fig. 3) having a round cross-section.



Brizzi lacks fold lines that project outward through deforming or embossing the package material. Jackson teaches a box comprising corner folds; wherein said folds comprising a semi-circular rounded projection of a three-quarter circle (16; see Figures 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Brizzi's container's fold-lines to be made of an embossment forming a circular projection in order to create corners with increased strength (Jackson; Page 2 lines 125-130).

Regarding claim 16, Brizzi, as modified above, teaches a hinge-lid pack characterized in that for the configuration of the transverse edges as a projection or recess, corner tabs, namely base corner tabs (Brizzi; 22) and/or end corner tabs (Brizzi; 22) are configured with a smaller width such that the corner tabs can be positioned exclusively between the transverse edges (Brizzi; see Fig. 1) configured as a projection or recess. Examiner notes that the corner tabs are cut with a tapered shape that defines a width shorter than the side walls.

Regarding claim 17, Brizzi, as modified above, discloses the claimed invention except for defining the radius of the projection to be between 1.5 and 4 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the projection have a radius of 1.5 to 4 mm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. Claims 14, 15, 19-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzi in view of Byrne (US 941356 A).

Regarding claims 14, 15, 19-21, 23 and 25, Brizzi teaches a hinge-lid box and the blank for making, made of cardboard or similar packaging material (Col 2 lines 35-38), in particular for cigarettes, comprising a box part (2), lid (4) and collar (see illustration above) and having longitudinal edges (13) and transverse edges (16) running crosswise thereto, characterized in that the longitudinal edges and/or transverse edges are configured by the deformation or embossing of the packaging material as an outwardly directed projection (see Fig. 3) having a round cross-section. Brizzi lacks fold lines that recess inward through deformation or embossing the package material.

Byrne teaches a box wherein the corner construction comprises an inward recessing circular shape (see Fig. 4) formed by deformation or embossing. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to construct the corner folds with an inward circular recession in order to create a strong yet flexible fold (Byrne; Page 1 lines 91-99).

Regarding claim 22, Brizzi, as modified above, discloses the claimed invention except for defining the radius of the projection to be between 1.5 and 4 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the projection have a radius of 1.5 to 4 mm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

5. Applicant's arguments, see Pages 7-12, filed 8/28/2009, with respect to the rejection(s) of claim(s) 10, 12, 13 and 16-18 under USC 103(a)—Brizzi in view of

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Voelker, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USC 103(a)-- Brizzi in view of Jackson. Examiner notes that the modifying reference, Jackson, relates to art that is more analogous than Voelker to the primary reference, Brizzi (i.e. both are cigarette packages).

6. Applicant's arguments with respect to claims 10, 12, 13 and 16-18 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments, see Page 13, filed 8/28/2009, with respect to the rejection of claims 11, 14, 15 and 19-23 under USC 103(a)—Brizzi in view of Byrne, have been fully considered but they are not persuasive. Applicant argues that the “inward circular recession” of Byrne does not provide the deficiencies in Brizzi’s disclosure. Examiner notes that Brizzi identifies a problem pertaining to the restoring forces in the corner folds of cigarette packages. Brizzi solves this problem by weakening said corner folds in cigarette packages with pre-embossed fold segments. Byrne, as well as Jackson, teach that said pre-embossed folds can project outward or inward (Byrne; Page 1 lines 91-99) in order to maintain a level of rigidity to the pack.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782